

25100797D

HOUSE BILL NO. 2565

Offered January 13, 2025

Prefiled January 12, 2025

A *BILL to amend and reenact § 16.1-89 of the Code of Virginia, relating to subpoena duces tecum; motions to quash or modify.*

Patron—Leftwich

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-89 of the Code of Virginia is amended and reenacted as follows:

§ 16.1-89. Subpoena duces tecum; attorney-issued subpoena duces tecum.

A judge or clerk of a district court may issue a subpoena duces tecum pursuant to the terms of Rule 4:9A of the Rules of the Supreme Court of Virginia except that such subpoena may be directed to a party to the case as well as to a person who is not a party.

Subpoenas duces tecum for medical records issued by an attorney shall be subject to the provisions of §§ 8.01-413 and 32.1-127.1:03 except that no separate fee for issuance shall be imposed.

A subpoena duces tecum may also be issued by an attorney-at-law who is an active member of the Virginia State Bar at the time of issuance, as an officer of the court. Any such subpoena duces tecum shall be on a form approved by the Committee on District Courts, signed by the attorney as if a pleading and shall include the attorney's address. A copy, together with the attorney's certificate of service pursuant to Rule 1:12, shall be mailed or delivered to the clerk's office of the court in which the case is pending on the day of issuance by the attorney. The law governing subpoenas duces tecum issued by a clerk shall apply mutatis mutandis, except that attorneys may not issue subpoenas duces tecum in those cases in which they may not issue a summons as provided in § 8.01-407. A sheriff shall not be required to serve an attorney-issued subpoena that is not issued at least five business days prior to the date production of evidence is desired. When an attorney-at-law transmits one or more subpoenas duces tecum to a sheriff to be served in his jurisdiction, the provisions in § 8.01-407 regarding such transmittals shall apply.

If the time for compliance with a subpoena duces tecum issued by an attorney is less than 14 days after service of the subpoena, the person ~~to whom it is directed~~ *subject to or affected by the subpoena* may serve upon the party issuing the subpoena a written objection setting forth any grounds upon which such production, inspection, or testing should not be had. If objection is made, the party on whose behalf the subpoena was issued and served shall not be entitled to the requested production, inspection, or testing, except pursuant to an order of the court, but may, upon notice to the person ~~to whom~~ *subject to or affected by the subpoena was directed*, move for an order to compel production, inspection, or testing. Upon such timely motion, the court may quash, modify, or sustain the subpoena.

2. That the Supreme Court of Virginia shall revise the relevant provisions of Rules 4:1 and 4:9A of the Rules of Supreme Court of Virginia to be consistent with the provisions of this act.

INTRODUCED

HB2565